

BOARD OF ZONING APPEALS

Minutes

March 25, 2003

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m. on March 25, 2003, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

JAMES SKELTON, RANDY PHILLIPS, JOHN ROGERS, BICKLEY FOSTER, ERMA MARKHAM

The following Board members was absent:

JAMES RUANE

SHARON DICKGRAFE -- Law Department present

J. R. COX -- Office of Central Inspection present.

The following Planning Department staff members were present:

SCOTT KNEBEL Assistant Secretary,

ROSE SIMMERING, Recording Secretary.

SKELTON: Item #1, January 28, 2003, BZA meeting minutes.

FOSTER moves, MARKHAM seconds to approve January 28, 2003 BZA meeting minutes.

Motion Carries 5-0.

SKELTON: Item #2, BZA2003-05, variance request to the Sign Code to permit an off-site sign to be located within 605 ft of a park, north of Harry and east of the Kansas Turnpike, first we will hear from staff.

KNEBEL, Planning staff: Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

SECRETARY'S REPORT

CASE NUMBER: BZA2003-00005

OWNER/APPLICANT: Janyce L. Putnam Revocable Living Trust and Gemini Outdoor Advertising

AGENT: Ferris Consulting c/o Greg Ferris

REQUEST: Variance to Section 24.04.200(g) of the Sign Code to permit an off-site sign to be located within 605 feet of a public park

CURRENT ZONING: "LC" Limited Commercial & "GO" General Office

SITE SIZE: 0.96 Acres

LOCATION: North of Harry and east of the Kansas Turnpike (I-35)

BACKGROUND: The applicant is requesting a variance to Section 24.04.200(g) of the Sign Code to permit an off-site sign (billboard) to be located within 605 feet of a public park. The subject property is located north of Harry and east of the Kansas Turnpike (I-35) at 7602 E. Harry. The subject property is zoned "LC" Limited Commercial and "GO" General Office and is undeveloped.

The applicant proposes to construct a 14-foot by 48-foot billboard in the southwest corner of the subject property as illustrated on the attached site plan. The billboard is proposed to be oriented such that it faces the direction of travel along the Kansas Turnpike. The billboard is proposed to be a maximum of thirty feet in height.

The Sign Code permits a billboard on property zoned "LC" Limited Commercial under restricted circumstances. The Sign Code requires at least 1,500 feet of commercial or industrial frontage along a roadway's direction of travel between mile section lines, and only one billboard is permitted on property zoned "LC" Limited Commercial for each 1,500 of commercial or industrial frontage between mile section lines. For the Kansas Turnpike between the Harry and Rock mile section lines, staff estimates that there is slightly more than the required 1,500 feet of commercial frontage. If the variance is granted, the applicant will be required to submit an exhibit providing exact measurements of commercial frontage, which is a standard requirement for off-site sign permit applications.

The Sign Code also prohibits billboards in certain locations. One of the prohibited locations is within 660 feet of a public park. The proposed location of the billboard is within 605-feet of Cottonwood Park, which is located across the Kansas Turnpike northwest of the subject property as illustrated on the attached aerial photograph. A portion of the subject property is more than 660 feet from Cottonwood Park, and a billboard could be located on this portion of the subject property. However, the applicant states in the attached letter that the proposed location of the billboard was selected because placing the billboard at least 660 feet from the park would make the property extremely difficult, if not impossible, to develop. Therefore, the applicant requested a variance to allow the billboard to be placed 605-feet from Cottonwood Park.

ADJACENT ZONING AND LAND USE:

NORTH	"MF-29" & "SF-5"	Cottonwood Park, single family
SOUTH	"GC"	Horse stable and riding academy
EAST	"LC" & "MF-29"	Medical Office, duplex
WEST	"LC"	Call center

UNIQUENESS: It is the opinion of staff that this property is unique, inasmuch as the property is separated from the park property by a freeway, which provides a major barrier between the two properties. Additionally, the freeway and commercial properties along the freeway frontage existed prior to the dedication of the park property; therefore, the uniqueness of the property was not created by an action of the property owner.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as six billboards are located in the immediate vicinity, including two pre-existing billboards located closer to Cottonwood Park than the billboard proposed by the applicant, without any noticeable detrimental impacts on adjacent properties or the park.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the billboard to be located more than 660-feet from the park will decrease the amount of developable land on the subject property without any corresponding benefit to the public good.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as billboard signs are common along freeway frontages and in this general

vicinity, and the proposed billboard meets all Sign Code requirements except for the required separation from a public park. Since the public park has no improvements, is utilized primarily as open space for community drainage, and is separated from the proposed location of the billboard by a major barrier, the principles of public interest will not be adversely impacted by granting the variance.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for a locating the billboard within the southwest portion of the subject property in order to preserve as much developable land as possible on the site will provide a reasonable balance with the visual qualities of the community, especially since the sign will be separated from the park by a major barrier.

RECOMMENDATION: It is staff's opinion that the variance requested is appropriate. Should the Board determine that the five conditions necessary for granting the variance exists, then it is the recommendation of the Secretary that the variance be GRANTED, subject to the following conditions:

1. The off-site sign shall comply with all regulations of the Sign Code, except that one off-site sign shall be permitted on the subject property a minimum of 605 feet from a public park.
2. The off-site sign on the subject property shall be limited in size to 14-feet by 48-feet and to maximum total height of 30 feet.
3. The applicant shall obtain all permits necessary to construct the signage, and the signage shall be erected within one year of the granting of the variance, unless such time period is extended by the Board.
4. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

SKELTON: Any questions for Scott?

FOSTER: It is not possible to see the sign from the park because of the height of the road?

KNEBEL: You will probably see a portion of the sign from this park. The entire sign, it is difficult to say. The grade of the property itself is quite a bit higher the adjacent property. The sign will not be any good if it is not visibility from the roadway.

FOSTER: Will this sign face north and south bound?

KNEBEL: Yes.

MARKHAM: The sign will be facing Harry?

KNEBEL: No, the sign will face the direction of travel along the Turnpike, which is northeast to southwest.

FERRIS CONSULTING, Greg Ferris, agent: This sign would be allowed in this location except for the park. That is really the only variance that we are asking for today. We have met setback requirements. We need a variance from the distance from the park. I believe the corner of the sign will be seen from the park. I believe the sign would be similar to a couple of signs that are also at this location. We believe this is unique, because had this park not been dedicated, we could have done the sign by right. The park is hardly used by people, and the adjacent property should not be affected. The

park is buffered from the highway, by trees. This sign will not create a negative visual image in this area. I think we meet the five criteria and we agree with staff conditions and recommendations.

FOSTER: Will either side of the sign be lighted? Both sides?

FERRIS: Yes, both sides will be lighted.

Don Jernigan, Gemini Outdoor Advertising, 7500 E. 151st #139, Bixby, OK 74008: It will be lighted from dusk to daylight the sign will have a light sensor on it.

FOSTER: This looks like a reasonable request.

ROGERS MOVES FOSTER SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN THE SECRETARY'S REPORT FOR BZA2003-05.

MOTION carries 5-0, and the Board adopts the following resolution:

BZA RESOLUTION NO. 2003-00005

WHEREAS, Janyce L. Putnam Revocable Living Trust and Gemini Outdoor Advertising (owner/applicant) Ferris Consulting c/o Greg Ferris, (agent) pursuant to Section 2.12.590.B, Code of the City of Wichita, requests variances to Section 24.04.200(g) of the Sign Code to permit an off-site sign to be located within 605 feet of a public park on property zoned "LC" Limited Commercial and "GO" General Office and legally described as follows:

Lot 1, except the east 44.03 feet, Putnam Addition, Wichita, Kansas, Sedgwick County, Kansas.
Generally located north of Harry and east of the Kansas Turnpike (I-35).

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

WHEREAS, the Board of Zoning Appeals did, at the meeting of March 25, 2003, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the property is separated from the park property by a freeway, which provides a major barrier between the two properties. Additionally, the freeway and commercial properties along the freeway frontage existed prior to the dedication of the park property; therefore, the uniqueness of the property was not created by an action of the property owner.

WHEREAS, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property

owners, inasmuch as six billboards are located in the immediate vicinity, including two pre-existing billboards located closer to Cottonwood Park than the billboard proposed by the applicant, without any noticeable detrimental impacts on adjacent properties or the park.

WHEREAS, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the sign regulations will constitute an unnecessary hardship upon the applicant, inasmuch as requiring the billboard to be located more than 660-feet from the park will decrease the amount of developable land on the subject property without any corresponding benefit to the public good.

WHEREAS, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as billboard signs are common along freeway frontages and in this general vicinity, and the proposed billboard meets all Sign Code requirements except for the required separation from a public park. Since the public park has no improvements, is utilized primarily as open space for community drainage, and is separated from the proposed location of the billboard by a major barrier, the principles of public interest will not be adversely impacted by granting the variance.

WHEREAS, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as a stated intent of the Sign Code is to provide an opportunity to achieve a reasonable balance between the need for a sign and preserving the visual qualities of the community. In this instance, the need for a locating the billboard within the southwest portion of the subject property in order to preserve as much developable land as possible on the site will provide a reasonable balance with the visual qualities of the community, especially since the sign will be separated from the park by a major barrier.

WHEREAS, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that a variance to Section 24.04.200(g) of the Sign Code to permit an off-site sign to be located within 605 feet of a public park on property zoned "LC" Limited Commercial and "GO" General Office and legally described as follows:

Lot 1, except the east 44.03 feet, Putnam Addition, Wichita, Kansas, Sedgwick County, Kansas.
Generally located north of Harry and east of the Kansas Turnpike (I-35).

The variance is hereby GRANTED, subject to the following conditions:

1. The off-site sign shall comply with all regulations of the Sign Code, except that one off-site sign shall be permitted on the subject property a minimum of 605 feet from a public park.
2. The off-site sign on the subject property shall be limited in size to 14-feet by 48-feet and to maximum total height of 30 feet.
3. The applicant shall obtain all permits necessary to construct the signage, and the signage shall be erected within one year of the granting of the variance, unless such time period is extended by the Board.

4. The resolution authorizing the variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

ADOPTED AT WICHITA, KANSAS, this 25th DAY of MARCH, 2003.

SKELTON: Item #3 report from OCI.

J. R. COX -- Office of Central Inspection: I have two cases to report. BZA2001-64 this was a variance to reduce the rear yard setback by 10'10" for a new building at Horace Mann Elementary School located on the northwest corner of Market and 11th Street North, and the exterior of that school is nearly complete.

The second case, BZA2002-00015, was a variance for Line Medical at Murdock just west of Mosley, 810 E. Murdock, a variance to reduce the front building setback from 20 feet to 10 feet. There was a one year time limit which will expire next month and they have not built the proposed addition, so we will be contacting them and letting them know they have the opportunity to come in if they wish to and ask for an extension of time from the Board and if they don't the case will be closed.

FOSTER: We used to hear a lot about the Boathouse and the parking at the Boathouse there, whatever happened to that subject? Weren't they required to have a certain amount of parking? Did that ever get resolved or does that have anything to do with Waterwalk now or moving City Arts?

COX: I don't have the information necessary to answer that. I can try and find out and report at the next meeting.

FOSTER: It used to be on the agenda almost all the time.

KNEBEL: We have talked about the Waterwalk project with Economic Development, and Planning staff has recommended that they rezone that entire area to Central Business District to address the parking requirement. That would also permit the residential uses that they are proposing in that area as well.

FOSTER: Sharon do we have any court cases pending?

DICKGRAFE: The Lakeridge Development case, which is the Dickinson Theater proposal. At this point, it is up for a discovery conference this Friday.

Meeting adjourns 1:55 p.m.